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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JACQUELINE SCOTT CORLEY, MAGISTRATE JUDGE

IN RE: FACEBOOK, INC. CONSUMER )  
PRIVACY USER PROFILE LITIGATION. ) NO. 18-MD-2843 VC (JSC)  
San Francisco, California  
Monday, November 9, 2020

**TRANSCRIPT OF ZOOM VIDEOCONFERENCE PROCEEDINGS**

**1:33 P.M. TO 2:01 P.M.**

**APPEARANCES:**

For Plaintiffs:

BLEICHMAR FONTI & AULD LLP  
555 12th Street  
Suite 1600  
Oakland, California 94607  
**BY: LESLEY E. WEAVER, ESQ.**  
**ANNE K. DAVIS, ESQ.**  
**MATTHEW MONTGOMERY, ESQ.**

KELLER RORHBACK, LLP  
1201 Third Avenue  
Suite 3200  
Seattle, Washington 98101  
**BY: DEREK W. LOESER, ESQ.**  
**ADELE AILEEN DANIEL, ESQ.**

KELLER ROHRBACK, LLP  
300 Lakeside Drive  
Suite 1000 --  
Oakland, California 94612  
**BY: BENJAMIN B. GOULD, ESQ.**

Transcribed by: **BELLE BALL, CSR 8785, CRR, RDR**  
Official Reporter, U.S. District Court

(Appearances continued, next page)

**APPEARANCES, CONTINUED:**

For Defendants:

GIBSON DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197  
**BY: DEBORAH L. STEIN, ESQ.**

GIBSON DUNN & CRUTCHER LLP  
1881 Page Mill Road  
Palo Alto, California 94304  
**BY: MARTIE P. KUTSCHER, ESQ.**

GIBSON DUNN & CRUTCHER LLP  
2100 McKinney Avenue  
Suite 1100  
Dallas, Texas 75201  
**BY: RUSSELL H. FALCONER, ESQ.**

GIBSON DUNN AND CRUTCHER LLP  
555 Mission Street  
Suite 3000  
San Francisco, California 94105  
**BY: JOSHUA S. LIPSHUTZ, ESQ.**

1 Monday, November 9, 2020

1:33 p.m.

2 P R O C E E D I N G S

3 **THE CLERK:** Calling Case No. 18-md-2843, In Re:  
4 Facebook, Inc. Consumer Privacy User Profile Litigation.

5 Counsel for the plaintiffs, please state your appearances  
6 for the record.

7 **MR. LOESER:** Good afternoon, Your Honor. Derek  
8 Loeser from Keller Rohrbach.

9 **THE COURT:** Good afternoon.

10 **MS. WEAVER:** Good afternoon, Your Honor. Lesley  
11 Weaver, Anne Davis and Matt Montgomery from Bleichmar Fonti &  
12 Auld.

13 **THE COURT:** Good afternoon.

14 **MR. GOULD:** Benjamin Gould from Keller Rohrbach.

15 **THE COURT:** Hello.

16 **MS. DANIEL:** Adele Daniel from Keller Rohrbach.

17 **THE COURT:** Hi.

18 **THE CLERK:** And for defendants?

19 **MS. STEIN:** Good morning, Your Honor. Deborah Stein  
20 for Facebook.

21 I'm here today with Russ Falconer who will be arguing on  
22 behalf of Facebook, Joshua Lipshutz, and Martie Kutscher.

23 **THE COURT:** Hi, everybody.

24 Okay. Let's see. So we had some discussion about this  
25 last go-round on the motion to file an amended complaint.

1 And I guess I should start with -- who's arguing for the  
2 plaintiffs?

3 **MR. LOESER:** Yes, thank you, Your Honor. Derek  
4 Loeser. Adele Daniel will be arguing for the plaintiffs.

5 **THE COURT:** Okay.

6 **MR. LOESER:** And there is one housekeeping matter  
7 that I just wanted to bring to your attention before we get  
8 started, if that's okay?

9 **THE COURT:** Sure.

10 **MR. LOESER:** You probably haven't seen, but a  
11 stipulation was filed a few minutes ago that resolves the  
12 motion-to-strike portion of Facebook's motion. So the motion  
13 to dismiss is still pending, and Ms. Daniel will be arguing  
14 that.

15 But there was another portion of their motion that had to  
16 do with the allegations in the consolidated amended complaint,  
17 the second amended complaint. The parties have resolved that  
18 issue by stipulation, which has now been filed.

19 So what we have for today is the motion to dismiss.

20 **THE COURT:** Was the -- the stipulation, I assume,  
21 just says that my prior rulings apply to the allegations in  
22 the complaint, which is what I was going to say anyway.

23 **MR. LOESER:** Right.

24 **THE COURT:** So, okay.

25 So Ms. Daniel, then, I should start with you, I think.

1       So I guess my -- my view of this is that there are certain  
2 facts which, if they existed, could make this a difficult  
3 question.

4       I think that for example, had Facebook foisted the  
5 forum-selection clause upon its U.K. users in an effort to  
6 undercut the class action, that could -- you know, that could  
7 be an issue.

8       I also think that if the -- these new U.K. plaintiffs had  
9 been named plaintiffs -- named plaintiffs -- in the original  
10 lawsuit, that that could create problems for them.  
11 Potentially, at least. At a minimum, it would make this a more  
12 difficult motion.

13       But I think that what we know now is that, you know,  
14 Facebook did not foist this provision on its U.K. users in an  
15 effort to undercut the class action. I think that's  
16 undisputed. That it was -- it was doing so to comply with  
17 European law. And these new U.K. plaintiffs were members of  
18 the proposed class, right, as absent -- as absent class members  
19 when the lawsuit was originally filed. But they were not  
20 actual plaintiffs in the case.

21       And under those circumstances, and given the language of  
22 the forum-selection clause and, I guess, the choice-of-law  
23 provision, you know, it seems clear to me that it does apply to  
24 the named -- the new named U.K. plaintiffs. And that the  
25 result of that is that I need to grant the motion to dismiss as

1 to the U.K. plaintiffs.

2 Of course, it's without prejudice to those U.K. plaintiffs  
3 and anybody else in the U.K. who's a Facebook user, or who was  
4 a Facebook user at the pertinent times, to file, you know,  
5 their own lawsuit in the U.K.

6 And you know, I say that because the language of the  
7 clause -- which I'm pulling up right now -- pretty clearly is  
8 not limited to any dispute that arises, you know, after the  
9 parties entered into the agreement.

10 And so I -- I think -- I think this is a fairly clear-cut  
11 case, a clear-cut motion in Facebook's favor. And so that's  
12 the view I have of it, coming into the hearing.

13 Tell me where I went wrong in that analysis.

14 **MS. DANIEL:** Well, I'll address the two issues in  
15 turn.

16 First, even if they didn't foist this new agreement on the  
17 U.K. plaintiffs, what they're doing is foisting the application  
18 of the agreement on this lawsuit that -- that predated the new  
19 term.

20 So --

21 **THE COURT:** Right.

22 **MS. DANIEL:** Right. So it's the application. It's  
23 not the new terms, themselves; it's the application that's  
24 unreasonable.

25 The language did not indicate to U.K. plaintiffs -- you

1 know, it says, you know, "will apply," "will govern," so we  
2 read that language to be prospective. And Facebook provided  
3 U.K. plaintiffs no indication that it was going to turn around  
4 and interpret these terms to extinguish a pre-existing lawsuit  
5 that had been filed on their behalf.

6 **THE COURT:** Well, but, I mean, I guess that's --  
7 that's simply an issue of interpreting the language of the  
8 agreement that Facebook entered into with its U.K. users in --  
9 when was it? 2019?

10 **MS. DANIEL:** May, 2018.

11 **THE COURT:** May, 2018.

12 **MS. DANIEL:** Uh-huh.

13 **THE COURT:** And, you know, I guess I disagree with  
14 you. I mean, you have that first prefatory paragraph that,  
15 you know, talks about what laws will apply, and if a dispute  
16 does arise.

17 But, you know, the rest of the language seems to make  
18 pretty clear that it's not limited to cases that will -- you  
19 know, disputes that will arise in the future.

20 I mean, first it says -- you know, I'm looking at the  
21 paragraph immediately below the one that you like to cite. It  
22 says -- you know, makes reference to (As read):

23 "...any dispute that you have against us that arises  
24 out of or relates to these terms or Facebook  
25 products."

1 Right? And then further it specifies in the next  
2 paragraph that:

3 "These terms supersede any prior agreements."

4 Right? So what's the point of saying that these terms  
5 supersede the prior agreements, if the prior agreements would  
6 still apply to a lawsuit that's filed in the future about  
7 something that happened in the past?

8 **MS. DANIEL:** It's saying that, going forward, that  
9 these clauses and these terms apply. So they couldn't change  
10 anything, for example, about what consent the plaintiffs had  
11 made for the activities of Facebook prior to the agreement.  
12 It's applying, going forward. And we agree that the terms do  
13 apply from May, 2018, on.

14 Where we disagree is that they apply to claims that were  
15 already accrued prior to that. But even if they apply to, you  
16 know, claims that had accrued prior to that, it's something  
17 altogether different to say that they apply in a lawsuit that's  
18 already been filed.

19 And that's what --

20 **THE COURT:** Well, that sort of gets to the second  
21 point that I was making at the outset, which is that it's true  
22 that the lawsuit was filed, but the lawsuit was filed by  
23 somebody else. Right? And the lawsuit was not filed by the  
24 U.K. plaintiffs who are now proposing to be the -- the class  
25 representatives in this case. The named plaintiffs in this



1 case.

2 To be sure, their claims relate back to the original  
3 filing date for statute-of-limitations purposes. But they  
4 were, nonetheless, not the plaintiffs in the lawsuit back then.  
5 And so if they had been the plaintiffs in the lawsuit back  
6 then, I think that, like I said, that would make it a more  
7 difficult question, and Facebook might very well be facing an  
8 uphill battle. But, they weren't in the lawsuit. They hadn't  
9 filed a lawsuit yet.

10 They're trying to file a lawsuit -- trying to file a  
11 lawsuit against Facebook many months after they -- they entered  
12 into this agreement about the forum and about the law that  
13 applies.

14 **MS. DANIEL:** So the courts recognize that they were  
15 -- but they were putative class members. And courts recognize  
16 in the class-action context that when you're substituted in  
17 (Inaudible) the plaintiff, they step into the shoes of the  
18 former named representative.

19 So courts recognize, like in *Phillips v. Ford Motor*  
20 *Company*, that substitution is common in class action. That  
21 often a plaintiff has to withdraw from a case for personal  
22 reasons, and one of those putative class members who had been  
23 waiting in the wings steps into their shoes for all purposes.

24 And courts recognize that it's true, as you said in the  
25 relates-back context, as in *Immigrants Assistance Project*, but

1 they also recognize it in *Graves*. And we're talking about  
2 tolling of claims. It's just a simple substitution. It's not  
3 meant to muck anything up or change anything about the lawsuit.  
4 It's --

5 **THE COURT:** The tolling is about relation back.  
6 Right?

7 I mean, it's all about making sure that -- I mean, the  
8 whole point of that in the class-action context is, you know,  
9 you have all these unnamed class members who can rely on the  
10 fact that somebody is pursuing claims on their behalf. So they  
11 don't have to rush to court to file their own lawsuit. Which,  
12 if -- if that weren't the case, then we'd probably have a  
13 gazillion individual lawsuits against Facebook right now,  
14 for -- you know, by individuals who are trying to preserve, you  
15 know, their own claims, and don't want the clock to run. It  
16 makes perfect sense in that context.

17 But when you're talking about somebody who is actually  
18 bringing a lawsuit for the first time, it seems like a pure  
19 fiction to say that -- to say that they brought the lawsuit  
20 back when the prior named plaintiff brought the lawsuit. They  
21 didn't. They brought it now.

22 **MS. DANIEL:** I think what those cases say is that we  
23 look back to the original complaint when we're talking about  
24 when they brought the lawsuit. So that's -- the same thing is  
25 true of statute of limitations as is true here. You look back

1 to when they brought the lawsuit.

2 So these putative plaintiffs, like the ones you mentioned,  
3 they are waiting in the wings, like you said. They don't need  
4 to file their own lawsuit because their claims are on file,  
5 California claims in a California forum. They don't need to  
6 rush everywhere and file new. The same thing applies. You  
7 look back to that original pleading.

8 **THE COURT:** But why -- I mean, I guess -- what are  
9 your -- do you have cases that apply that concept outside the  
10 context -- outside the statute-of-limitations or tolling  
11 context?

12 **MS. DANIEL:** No, but I think it's that principle, and  
13 why relation back is spoken of so broadly. It's the principle  
14 of: You have these putative class members; they're allowed to  
15 rely on the original complaint. We don't want them rushing  
16 off to file their own litigation. All of those principles  
17 apply to --

18 **THE COURT:** Well, why -- why do those principles  
19 apply in a context like this?

20 I mean, it's sort of weird because the -- I mean, you are  
21 sitting here arguing right now on behalf of people in the U.K.,  
22 that they should not be allowed to file their lawsuits in the  
23 U.K. That they should be required to file their lawsuits in  
24 California.

25 In other words, there was previously -- before this

1 forum-selection clause took effect for these U.K. citizens,  
2 there was previously a forum-selection clause that took effect  
3 that was far more onerous to people in the U.K., and said that  
4 if you want to sue Facebook, you have to sue Facebook in the  
5 Northern District of California -- or maybe it was just in  
6 California, I can't remember -- and California law will apply.

7 So there was, like, no incentive before this new  
8 forum-selection clause was adopted for people in the U.K. to  
9 rush to the California courts to preserve their right to sue  
10 Facebook in the California courts before they were entitled to  
11 do so in the U.K. courts, was there?

12 **MS. DANIEL:** We believe that this is the best forum  
13 for the U.K. plaintiffs to pursue their claims. We have a  
14 class-action procedure here that is, we believe, better than  
15 the class-action procedure available to people in the U.K. to  
16 pursue their claims.

17 In this case, Facebook is here, the evidence is here, the  
18 witnesses are here. Discovery is more transparent here.  
19 That's why these plaintiffs belong in this forum, and should  
20 want to preserve their California claims.

21 What we don't want to allow is for defendant in a  
22 class-action case to change the operative agreement as to a  
23 putative -- all putative class members, and prevent them from  
24 having a lawsuit that's already on file.

25 Like --

1           **THE COURT:** That's why I said --

2           **MS. DANIEL:** Right.

3           **THE COURT:** I mean, I think, you know, if it becomes  
4 more difficult -- it would become more difficult for Facebook  
5 if they had in fact (Inaudible) the forum-selection clause to  
6 try to undercut the class action. Right? But they're  
7 required by law to do it.

8           **MS. DANIEL:** And I think the problem is that they're  
9 applying the forum-selection clause here to extinguish a  
10 preexisting lawsuit.

11           So going forward, May, 2018, and beyond, U.K. plaintiffs  
12 could sue for Facebook's conduct in the U.K. But prior to  
13 that, the class that was on file as -- April, 2018, that  
14 contract is the one that --

15           **THE COURT:** Well, you're saying "extinguish a  
16 preexisting lawsuit." I mean, that's not correct. Number  
17 one, this lawsuit isn't going anywhere. Right? This lawsuit  
18 on behalf of all U.S. Facebook users remains.

19           And number two, it's not even extinguishing the lawsuit on  
20 behalf of U.K. plaintiffs. It's dismissing this particular  
21 lawsuit by these particular U.K. plaintiffs, and without  
22 interfering with their ability to pursue their lawsuit in the  
23 U.K. against Facebook.

24           **MS. DANIEL:** But it does extinguish their opportunity  
25 to pursue California claims in the California forum that they

1 were entitled to under the prior agreement, and that they  
2 had --

3 **THE COURT:** It all begs the question -- I mean,  
4 everything you and I are discussing just begs the question  
5 about what the new language means.

6 Does the new language, the -- the new forum-selection  
7 clause, by its terms, apply to disputes that arose prior to its  
8 adoption?

9 And I just don't see how you can say that the language  
10 does not apply to disputes that arose prior to the adoption of  
11 this agreement in May of 2018.

12 **MS. DANIEL:** Under federal contract law, you look to  
13 what a reasonable reader would read the contract to mean. And  
14 if there's any ambiguity, you apply it against the drafter.  
15 There's nothing in the contract, though, that indicates to a  
16 U.K. plaintiff reading it that: Oh, I am, you know,  
17 extinguishing my right to participate as a putative class  
18 member in litigation that's already on file.

19 What we're worried about is there's no conversation  
20 between the parties that: Oh, I'm going -- by Facebook: Oh,  
21 I'm going to turn around and assert that this clause, you know,  
22 extinguishes your participation in a putative class action.

23 I'm trying to be more careful about the "extinguishes"  
24 language because it is more narrow.

25 And that's what's unreasonable. So I think *AT&T* court

1 recognizes that it's odd for a party to be in litigation and  
2 then agree to a new contract with a forum-selection clause and  
3 a new choice of law, without any discussion of: Oh, by the  
4 way, this is going to apply to already-filed claims. It's not  
5 even already-accrued claims, it's already-filed claims. That's  
6 odd, and *AT&T* court says that's unreasonable. And that's --  
7 that's our view.

8           **THE COURT:** But even as applied to -- let's just  
9 change the facts a little bit and pretend that the prior U.K.  
10 named plaintiffs never went away. Okay? And these new U.K.  
11 plaintiffs who are now proposing to be named plaintiffs -- or  
12 I guess they are named plaintiffs, because I granted the  
13 motion for leave to amend the complaint.

14           Let's pretend that these new named plaintiffs from the  
15 U.K. never came in as named plaintiffs, and just remained, you  
16 know, members of the proposed class action who -- brought by  
17 the prior U.K. plaintiffs.

18           And let's say we got to class certification, and Facebook  
19 filed a motion to deny or partially deny class certification,  
20 and said that, you know, you can't certify on behalf of the  
21 U.K. class because the U.K. class members have since adopted --  
22 have since entered into this agreement that they have to pursue  
23 their claims in the U.K.

24           I mean, wouldn't the answer be the same? That I would --  
25 in other words, I would deny class certification for the U.K.

1 class, and -- but the members of the U.K. class would be free  
2 to pursue their claims in the U.K. Right? Because they have  
3 the forum-selection clause.

4 And presumably -- I mean, this may be a question of U.K.  
5 law. But if it were in the U.S., presumably the proposed class  
6 members, the proposed U.K. class members would have the statute  
7 of limitations tolled. Because they were putative class  
8 members in this action up until that point that class  
9 certification was denied.

10 **MS. DANIEL:** I don't think we disagree that U.K.  
11 plaintiffs could, in theory, file a class action elsewhere.  
12 But we're asking to preserve the class action that was filed  
13 on their behalf in April, 2018, in the forum and under the  
14 laws that they prefer, and under the contract that was  
15 operative at the time we filed the lawsuit. We don't disagree  
16 there.

17 I do wonder: Does Facebook's argument depend on the fact  
18 that they're new? Or, or, as you suggest, is it -- is it true  
19 that these terms apply to all U.K. plaintiffs --

20 **THE COURT:** Right. And I think -- that's why I'm  
21 emphasizing, I think it would be a much more difficult case if  
22 either one of two facts were present. One, that Facebook did  
23 it not to comply with the law, but to try to undercut the  
24 class action. Or two, if -- if Facebook tried to do it to  
25 plaintiffs who were named plaintiffs in the lawsuit prior to



1 the -- this new agreement being reached. Right?

2 Because if you had a named plaintiff -- imagine if you had  
3 -- maybe I should start talking -- why don't we use this  
4 opportunity to see if Mr. Falconer briefly wants to respond to  
5 any of this.

6 **MS. WEAVER:** Thank you, Your Honor. And may it  
7 please the Court.

8 I had four points that I thought would be helpful to the  
9 Court, based on the discussion so far. I think textually the  
10 clause is unambiguous that it applies to all claims, regardless  
11 of when they accrued.

12 And the idea that we take relation back and use that to  
13 somehow treat these unnamed class members as having filed at  
14 the time other folks filed, I think it both proves our point,  
15 and it proves too much.

16 I think it -- it proves our point because the concept of  
17 relation back in the case law, how it's explained is plaintiffs  
18 are treated as though they had filed a complaint, even though  
19 they had not. And that's all we're saying, is they had not, in  
20 fact, filed a complaint yet. So the relation-back concept,  
21 that underscores that these folks were not yet parties and had  
22 not yet filed claims.

23 I think that concept also, for the plaintiffs, proves too  
24 much. Because their view, if accepted, would preclude any  
25 putative class member from filing their own individual claim

1 anywhere else. Right?

2 That's the first-to-file doctrine I'm sure the Court's  
3 familiar with, that when you have a lawsuit involving parties  
4 and issues --

5 **THE COURT:** If the law is going to treat you as  
6 already having filed a lawsuit, then you're filing kind of  
7 duplicative lawsuits if you --

8 **MR. FALCONER:** Right. I mean, under an aggressive  
9 first-to-file -- I mean, not even that aggressive, just the  
10 letter of the doctrine. Once a person is named as a putative  
11 class member, first-to-file would preclude them from filing  
12 elsewhere if they were deemed to have filed and be a party to  
13 that class action. I just think that can't be the law.

14 The third point, and one that I feel duty-bound to make  
15 but do not want to linger on, I do want to point the Court to  
16 the *Salgado* case that we cited in our reply brief, California  
17 Court of Appeal case, that clauses that are worded the way this  
18 forum-selection clause is worded are routinely applied even to  
19 already-filed claims.

20 So that -- you know, again, we don't need that, because  
21 these folks have not yet filed a claim, but --

22 **THE COURT:** Yeah. You don't need that, I think, is  
23 an important point there. Because I -- you know, I wonder,  
24 these courts -- I was looking at that New Jersey District  
25 Court case just before the hearing. And I read that *Salgado*

1 case yesterday. And, and you know, I do question -- I  
2 question whether those cases are missing something.

3 You know, I guess if I had a case with that fact pattern,  
4 where it was a named plaintiff, right, who had previously filed  
5 a lawsuit against Facebook, and then Facebook entered into an  
6 agreement with them sometime thereafter -- a forum-selection  
7 clause, let's say, or arbitration agreement -- and then a court  
8 said -- and then it came to court, Facebook came to court and  
9 said -- I think the first question I would ask Facebook is:  
10 Well, did you have direct communications with the plaintiff who  
11 sued you, when you reached this agreement with them? Or did  
12 you negotiate it with their lawyer? Because if you directly  
13 communicated with a named plaintiff who sued you, directly  
14 negotiated with them, directly communicated with them, and  
15 reached this agreement with them about their lawsuit without  
16 the participation of their lawyer, you're probably in big  
17 trouble.

18 And I didn't see -- the cases that I read that you cited  
19 didn't seem to acknowledge that problem. And I wonder if those  
20 courts missed something. But I don't know if it's -- I don't  
21 know how relevant it is here, because of the fact that these  
22 individuals were not named plaintiffs in the lawsuit at the  
23 time that they entered into the agreement.

24 **MR. FALCONER:** Right. That's exactly right. And  
25 they weren't named plaintiffs. And as Your Honor has noted,

1 it's undisputed here that this clause was executed for a  
2 proper purpose, and in good faith, for GDPR compliance.

3 The one case that the plaintiff cited invalidating a  
4 forum-selection clause, there was an express finding of bad  
5 faith, and a bad-faith attempt to defeat the obligation.  
6 There's nothing like that here. And I think that's a  
7 controlling fact and circumstance.

8 The last point I wanted to alert the Court to is there's  
9 been some discussion of: In theory, could another action be  
10 filed elsewhere. There's been a development since we were  
11 together last that we wanted to let the Court know about.

12 About two weeks ago, a number of news outlets reported  
13 that Facebook has been sued in the U.K. in what's called a  
14 "group action," in a case arising out of the Cambridge  
15 Analytica events. Now, Facebook hasn't been served yet in that  
16 case, so we don't have a copy of the claim document, and we  
17 don't know all of the specifics.

18 But the press is reporting -- they've been in touch with  
19 the plaintiffs' counsel, that's where they're getting their  
20 information -- that the case focuses on privacy issues and data  
21 collection by third-party apps. And a group action is the  
22 U.K.'s closest equivalent to a U.S. class action.

23 The case reportedly seeks relief on behalf of more than a  
24 million Facebook users in the U.K. So it's not just a  
25 theoretical question of: Is there a preclusion problem if

1 these folks and other U.K. users like them are held to be bound  
2 to a mandatory forum-selection clause that requires them to  
3 litigate, thousands of miles from their home jurisdiction.  
4 Like, this newly-filed case, based on what we know about it,  
5 suggests that those are very real questions, and not  
6 theoretical ones.

7 And as --

8 **THE COURT:** Congratulations.

9 **MR. FALCONER:** Yes. So, lucky us, no doubt.

10 But I think in terms of comity, in terms of a court --  
11 what court is already dealing with U.K. issues, deals with them  
12 that -- on a daily basis, there is an action, as we understand  
13 it, now pending in the U.K. raising very similar issues to the  
14 issues raised here. So some of the discussion about could they  
15 file elsewhere, could they be part of a group action elsewhere,  
16 it appears that those issues are no longer theoretical.

17 And we would submit that's another factor that weighs in  
18 favor of dismissal under forum non-convenience.

19 **THE COURT:** Okay.

20 Ms. Daniel, do you want to wrap up?

21 **MS. DANIEL:** We also saw those news articles. But I  
22 don't think any case was actually filed in the U.K. I think  
23 it's another news article like we saw two years ago about  
24 cases -- firms in the U.K. launching investigations against  
25 Facebook. But I'm not sure that we've seen one actually

1 filed, and perhaps that's why Facebook hasn't been served in  
2 that case.

3 So one --

4 **THE COURT:** I take it, you're not behind that  
5 lawsuit?

6 **MS. DANIEL:** No, I'm not.

7 **THE COURT:** Got your hands full here, probably?

8 **MS. DANIEL:** Plenty, plenty to do here.

9 I just want to emphasize again that putative class members  
10 are just treated differently than a normal named plaintiff, for  
11 the reasons that Your Honor identified. So that they don't  
12 have to go and quickly file their own litigation.

13 It's just simply a different beast that courts have to  
14 deal with. And that that's why we have these special rules  
15 that only apply in class cases about relating back, or tolling,  
16 or just recognizing that substitution of a plaintiff is  
17 necessary in these cases, and shouldn't throw a wrench in the  
18 entire litigation.

19 We don't want defendants to be able to renegotiate a  
20 contract and then use it to extinguish a putative class's  
21 claim. It's not the same as extinguishing an individual  
22 plaintiff's claim. It really is -- or individuals just out  
23 there, who's not in a putative class. It's different when  
24 they're using the new forum to extinguish a putative class in a  
25 case.

1           **THE COURT:** Okay. I'll issue a ruling shortly.  
2           This -- this discussion was helpful. And, is there anything  
3           else we need to discuss today?

4           Judge Corley has you all under control?

5           **UNIDENTIFIED MAN:** She does, indeed, Your Honor.

6           **MS. WEAVER:** Very much so.

7           **THE COURT:** All right. Thank you.

8           **MS. DANIEL:** Thank you, Your Honor.

9           **MR. FALCONER:** Thank you.

10          (Proceedings concluded)

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**CERTIFICATE OF TRANSCRIBER**

I, BELLE BALL, CSR 8785, CRR, RDR, hereby certify that the foregoing is a correct transcript, transcribed to the best of my ability from the official electronic sound recording of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A handwritten signature in black ink that reads "Belle Ball". The signature is written in a cursive, flowing style.

\_\_\_\_\_  
/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Monday, November 23, 2020